

Summary : The New Developments in American Pleading Standards

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The New Developments in American Pleading Standards

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In Anglo-American civil procedure, parties exchange their briefs (pleadings) before trials. Pleading standards that require what should be written in the complaint have greatly changed historically. In 1938, the United States of America has adopted Federal Rules of Civil Procedure that has changed common law pleading or code pleading to notice pleading. Rule 8 (a) (2) requires that claims for relief shall contain “a short and plain statement of the claim showing that the pleader is entitled to relief”. The main aim of pleadings under this rule is to give the opponents and the court fair notice of what are the rough issues of the case. The role to exclude useless issues is left to pretrial conference or summary judgment that will be carried out later.

However, the United States Supreme Court showed the new view in *Bell Atl. Corp. v. Twombly* (*Twombly*), 550 U. S. 594 (2007) that the plaintiffs who seek damages under the Sherman Act must show plausible grounds to infer an illegal act. Two Justices dissented to this holding. The same court reinforced this view in *Ashcroft v. Iqbal* (*Iqbal*), 129 S.Ct. 1937 (2009) saying that the plaintiff seeking damages for discrimination against an Islamic after the 9.11 terrorist attack would need to allege more by way of factual content to nudge his claim of purposeful discrimination across the line from conceivable to plausible.

Four Justices dissented to this holding.

The precedent named the leading case in the field of pleadings is *Conley v. Gibson* (*Conley*), 355 U. S. 41 (1957). It announced that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Thereafter many cases followed *Conley*. But *Twombly* and *Iqbal* have weakened the value of *Conley* as a precedent. It is reported that the number of dismissed cases in the federal courts have been increasing after those decisions and some congressmen who thought those decisions unjust introduced bills to limit the scope of dismissal. The role of both decisions as precedents depends on the trend of case law and legislation hereafter.

The Japanese judicial system has not adopted the jury system. Accordingly, the plausibility of facts in the complaint is not necessarily asked in the stage of reviewing the complaints. But reviewing the reasonableness of allegations of both parties is important in order to avoid useless trials. In addition, if the allegation of one party looks un-plausible, I think it is possible not to take evidence.

Twombly and *Iqbal* must have taken into consideration the enormous sum that is required to carry out discovery in mammoth cases or the necessity to avoid the obstruction to governmental activities by frivolous actions. It is necessary, also in Japan, to review fully the reasonableness of allegations of both parties in the early stage and to exclude useless proofs. Those measures will bring fruitful and speedy trials and will make the court easily accessible to the people as a whole.